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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO CHAVEZ LIMON,

Defendant and Appellant.

G056401

(Super. Ct. No. 15HF0917)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Paige B. Hazard and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Alejandro Chavez Limon stabbed his friend with a screwdriver four times and a jury convicted him of attempted voluntary manslaughter and assault with a deadly weapon. Limon raises a single challenge to his convictions in contending the trial court committed prejudicial error when it denied his request to cross-examine the stabbing victim about the victim's intention to apply for immigration benefits commonly known as a "U visa," based upon the stabbing incident. We find the trial court did not abuse its discretion in prohibiting cross-examination about the issue given that the victim had not actually applied for a U visa and the prosecution had rejected the victim's previous request for assistance with an application. Further, even if we were to assume the trial court erred, we would find the error to be harmless. Thus, we affirm the judgment.

I

FACTS AND PROCEDURAL HISTORY

A. The stabbing incident

On a Sunday afternoon in August 2015, Vincente L. had been standing at a neighborhood stairway, having a beer and cigarette in the company of a friend, when Limon walked by on his way home from work.¹ Limon and Vincente conversed for about 20 minutes on the stairway before a disagreement ensued. The disagreement led to a physical skirmish which ended with Limon stabbing Vincente with a screwdriver, four times, at various places on Vincente's body. The first stab was to Vincente's lower back, while he had his back to Limon. The next was to the back side of Vincente's left shoulder, which pierced Vincente's chest cavity and punctured his lung. Another stab

¹ At trial, the prosecution and Limon stipulated that Vincente's blood-alcohol content after the incident was measured as 0.15 percent.

was to the front of Vincente's abdomen. Finally, Limon stabbed Vincente in the head, near his left temple.

Limon walked away from the scene, uninjured, without attending to the welfare of Vincente. Vincente was taken to the hospital by first responders where he remained for four days. Limon was arrested about two weeks later after providing a false identity and out-of-state driver's license to the arresting officer.

B. Jury conviction for attempted voluntary manslaughter and assault with a deadly weapon

The jury found Limon not guilty of attempted murder but guilty of the lesser included offense of attempted voluntary manslaughter (count one) and assault with a deadly weapon (count two). The jury also found Limon had inflicted great bodily injury in the commission of the offenses (Pen. Code, § 12022.7, subd. (a)) and personally used a deadly weapon. (Pen. Code, § 12022, subd. (b)(1).) Limon was sentenced to a six-year term in prison, consisting of a three-year midterm for the attempted voluntary manslaughter and an additional three years for the great bodily injury enhancement. The court stayed the sentence for Limon's aggravated assault conviction and struck the enhancement for inflicting great bodily injury in the interest of justice. Limon timely appealed.

II

DISCUSSION

Limon argues the trial court committed prejudicial error by preventing him from cross-examining Vincente about his intention to apply for a U visa, requiring a

reversal of his convictions.² Specifically, Limon argues he was erroneously prevented from fully impeaching Vincente as a dishonest witness for the purposes of determining who the initial aggressor of the incident was, in a case where the weighing of credibility between Vincente and Limon was crucial. We disagree and find no error occurred in excluding the issue from cross-examination. Further, we find that even if the exclusion had been error, it would have been harmless under the circumstances of this case.

A. The trial court did not abuse its discretion

A trial court's order is presumed correct and the appellant has the burden to demonstrate the court committed reversible error. (*People v. Alvarez* (1996) 49 Cal.App.4th 679, 694.) Relevant evidence is admissible evidence (§§ 350, 351), and can include "evidence relevant to the credibility of a witness." (§ 210.) "As a general matter, a defendant is entitled to explore whether a witness has been offered any inducements or expects any benefits for his or her testimony, as such evidence is suggestive of bias." (*People v. Brown* (2003) 31 Cal.4th 518, 544.) Indeed, statutory authority provides that impeachment evidence regarding a witness's motivation to lie can be deemed relevant to prove a disputed material fact. (See §§ 210, 780, subd. (f).)

However, it is also well established that a trial court has substantial discretion to exclude collateral evidence used to attack witness credibility (*People v. Thornton* (2007) 41 Cal.4th 391, 428-429), and "a trial court's [evidentiary] ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court

² We do not find merit in the Attorney General's argument that Limon failed to preserve his present claim on appeal because we find the motions in limine proceedings satisfied the requirement of Evidence Code section 354 (appellate reversal based upon an error in excluding evidence requires a demonstration that either "(a) The substance, purpose, and relevance of the excluded evidence was made known to the court . . . ," (b) it was futile to do so, or "(c) The evidence was sought by questions asked during cross-examination or recross-examination") (All further undesignated statutory references are to this code.)

exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113, overruled on another point by *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

During a hearing on motions in limine, Limon raised the issue of cross-examining Vincente about his intention to apply for what is commonly referred to as a U visa. Generally, U visas provide temporary immigration benefits to victims of specified crimes if a law enforcement agency certifies the victim was helpful in the prosecution of the crime. (8 U.S.C. § 1101 et seq.; see *Lee v. Holder* (9th Cir. 2010) 599 F.3d 973, 974 [discussing general qualifications for and benefits of U visas].) The parties informed the court that Vincente had previously approached a prosecutor to request assistance with applying for a U visa but the prosecutor had rejected the request. It is unclear when Vincente’s request had been made but clearly it had been over two and a half years since the stabbing incident when the hearing was conducted. Defense counsel argued cross-examination on the issue remained nevertheless proper because the prosecution’s rejection did not foreclose the potential for U visa assistance in the future, so the incentive could still motivate Vincente to embellish or lie at trial.

The court requested the parties to report back on whether Vincente had actually applied for a U visa and expressed its tentative position that if Vincente had submitted an actual U visa application and been formally denied, the court would be inclined to allow cross-examination on the issue. But if all that had occurred was the prosecution’s rejection of Vincente’s informal request for assistance with a U visa, the court was inclined to prohibit cross-examination on the issue. When the parties returned, defense counsel represented that Vincente had not applied for a U visa but had “followed up” and requested a copy of the underlying police report. The court ruled that cross-examination of Vincente regarding potential U visa benefits would not be allowed.

We find that the circumstances shown by the record do not support an argument that the trial court abused its discretion in making its ruling. The issue of

whether Vincente intended to apply for a U visa was a collateral one because the question had no direct relationship with the facts surrounding the stabbing incident. (See *People v. Rodriguez* (1999) 20 Cal.4th 1, 9.) Based upon the offer of proof made, the relationship between Vincente's credibility as a witness and a potential motivation to testify untruthfully based upon benefits theoretically available through a U visa was too tenuous to have made the issue relevant for cross-examination at trial.

Limon cites to three out-of-state cases to argue error occurred. We find the cases unpersuasive because their circumstances bare little similarity to the material circumstances of this case. First and foremost, all of the cases cited to by Limon involved circumstances in which the alleged victim had already applied for a U visa by the time of the defendant's trial. (*Romero-Perez v. Commonwealth* (Ky.Ct.App. 2016) 492 S.W.3d 902, 904 (*Romero-Perez*) [At trial, during prosecution's case-in-chief, defendant sought to cross-examine alleged domestic violence victim about the fact that she had applied for a U visa]; *State v. Del Real-Galvez* (Or.Ct.App. 2015) 270 Or.App. 224, 226 [346 P.3d 1289, 1291] (*Del Real-Galvez*) ["As defendant's case proceeded to trial, [sexual abuse victim's] mother applied for a U visa to remain in the United States and based her application on [victim's] allegations that defendant had sexually abused and coerced [victim]"; *State v. Valle* (Or.Ct.App. 2013) 255 Or.App. 805, 807 [298 P.3d 1237, 1239] (*Valle*) ["During the trial in this case, defendant sought to cross-examine [alleged sexual abuse victim] about the fact that she had applied for the U visa"].) Indeed, in *Romero-Perez*, the fact that the victim's U visa application was pending before the trial court at the time of trial was cited by the appellate court as the primary basis for finding error in the trial court's exclusion of cross-examination regarding the U visa. (*Romero-Perez, supra*, 492 S.W.3d at p. 903.) In contrast here, it was undisputed that after more than two and a half years following the stabbing incident, Vincente had still not applied for a U visa. As mentioned above, it even remained disputed whether Vincente intended to apply for a U visa because of the ambiguity in Vincente's reported

intention to apply for a “work permit.” To further illustrate the contrast in circumstances, the victim in *Valle* unequivocally testified about her understanding that the outcome of her pending U visa application depended upon the result of the criminal case being prosecuted against her accused stepfather. (*Valle, supra*, 255 Or.App. at p. 808.) No similar showing was made here.

Furthermore, the prosecution’s rejection of Vincente’s previous request for assistance to apply for a U visa demonstrates that traditional sources of bias were weak here because Vincente had not been offered any inducements and did not have a substantial basis to expect benefits to be gained by giving testimony favorable to the prosecution. (See *People v. Brown, supra*, 31 Cal.4th at pp. 544-545 [“As a general matter, a defendant is entitled to explore whether a witness has been offered any inducements or expects any benefits for his or her testimony, as such evidence is suggestive of bias”].) In contrast, the appellate court’s findings in *Del Real-Galvez* indicate the prosecutor in that case had signed a certification form in support of the victim’s mother’s U visa application. (*Del Real-Galvez, supra*, 270 Or.App. at p. 226.) In sum, the cases cited to by Limon do not persuade us that the trial court committed error when it ruled to prohibit cross-examination about Vincente’s possible intention to apply for a U visa.

B. Correctness of trial court’s ruling based upon Evidence Code Section 352

A balancing of the probative value of the cross-examination at issue against its potential prejudice, pursuant to section 352, also supports our conclusion to affirm the judgment. Section 352 authorizes a court to exercise its discretion to exclude evidence if the evidence’s probative value is substantially outweighed by its prejudicial impact. Even if a trial court does not conduct such an analysis, the section provides ground to affirm the correctness of the trial court’s ruling on appeal. (*People v. Zapien* (1993) 4 Cal.4th 929, 976.)

Accordingly, we find the marginal probative value of cross-examining Vincente about his intention to apply for a U visa was substantially outweighed by the probability that the issue would have created a substantial danger of undue prejudice at trial. (§ 352.) First, the collateral nature of the issue, by itself, minimized its probative value and emphasized the possibility of it prejudicing or confusing the jury. (See *People v. Lavergne* (1971) 4 Cal.3d 735, 742.) Next, the fact that the prosecution had rejected Vincente’s initial request for assistance and Vincente had not applied for a U visa for over two and a half years since the stabbing incident, demonstrates the questionable probative value of cross-examining Vincente about an incentive to lie in order to gain immigration benefits. As discussed above, Vincente had not been offered any inducements and there was no significant basis for him to expect benefits to be gained by giving testimony favorable to the prosecution.

At the same time, it is clear the proffered cross-examination issue presented a significant potential for prejudice because it would have involved discussing Vincente’s right to be present in this country. (*Romero–Perez v. Commonwealth, supra*, 492 S.W.3d at p. 906 [“In short, the U–Visa creates a pathway whereby an illegal immigrant may be able to obtain lawful permanent residency within three years”]; cf. § 351.4 [“[E]vidence of a person’s immigration status shall not be disclosed in open court” prior to an in camera hearing conducted to determine the admissibility of the evidence].) Indeed, our Legislature, recently enacting section 351.4 (Stats. 2018, ch. 12, § 2), recognized that the issue of illegal immigration is a sensitive one in this state. (*Id.* § 3, reprinted at Historical and Statutory Notes, 29B pt. 1A, West’s Ann. Evid. Code (2019 supp.) foll. § 351.4, p. 53 [“In order to immediately help protect undocumented residents of California and their ability to participate in the California justice system, it is necessary that this act take effect immediately”].) Accordingly, we find the trial court’s ruling was correct because the probable prejudicial effect of the proposed cross-examination issue substantially

outweighed its probative value pursuant to section 352, under the circumstances of this case.

C. Limon's federal constitutional rights were not violated

Limon contends the trial court's error in prohibiting cross-examination about Vincente's intention to apply for a U visa violated his right to confront adverse witnesses under the confrontation clause of the Sixth Amendment to the Constitution of the United States.³ A defendant's federal constitutional right to confront a witness is violated if a "defendant can show that the prohibited cross-examination would have produced "a significantly different impression of [the witness's] credibility."'" (*People v. Brown*, *supra*, 31 Cal.4th at p. 545.)

We disagree with Limon because a significantly different impression would not have been achieved by the proffered cross-examination, given that Limon effectively impeached Vincente's credibility at trial. Defense counsel mounted multiple attacks on Vincente's credibility based upon his conviction of domestic violence in 2009. At trial, Vincente claimed that although he had pleaded guilty to committing domestic violence, he had in reality not hit his wife on the night in question. Vincente claimed that he had only pleaded guilty in order to get out of jail faster so that he could work and send money

³ We find no merit in Limon's argument that his right to compulsory process under the Sixth Amendment to the Constitution of the United States was violated by the trial court's ruling that cross-examination on the collateral issue of a U visa would not be allowed. "As a general matter, the "[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's [federal constitutional] right to present a defense." [Citations.] Although completely excluding evidence of an accused's defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense.'" (*People v. Boyette* (2002) 29 Cal.4th 381, 427-428.) Further, as the United States Supreme Court has noted: "well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." (*Holmes v. South Carolina* (2006) 547 U.S. 319, 326.)

to his daughters. On cross-examination, defense counsel first obtained Vincente's admission that his assertion meant he had lied in a court of law. Then, defense counsel presented a credible impeachment witness — a former roommate of Vincente — who testified that on the night in question, Vincente had in fact kicked his wife repeatedly while she was on the ground.

Accordingly, defense counsel effectively demonstrated to the jury that Vincente was fully capable and willing to lie in a court of law to deny wrongdoing, make himself look sympathetic, and further his interests. Vincente's credibility was severely impeached irrespective of whether he intended to apply for a U visa such that cross-examination about the latter issue would not have produced a significantly different impression of Vincente's credibility to the jury. Accordingly, even if the trial court had erred in excluding this issue of cross-examination, such error did not violate Limon's right to confront Vincente under our federal Constitution.

D. Any error was harmless

Further still, even if error occurred, there was no manifest miscarriage of justice. Limon argues that because this case involved a credibility contest between Limon and Vincente, the error of preventing cross-examination of Vincente about whether he intended to apply for a U visa as a crime victim must be deemed prejudicial. Where federal constitutional rights are not implicated, a question of prejudice to a criminal defendant is determined by analyzing whether the defendant has demonstrated a reasonable probability of a more favorable outcome in his case under *People v. Watson* (1956) 46 Cal.2d 818, 836-837. (See *People v. Anderson* (2012) 208 Cal.App.4th 851, 886-887.)

We find that even if the trial court erred, it was harmless under *Watson* — i.e., no miscarriage of justice occurred — because the outcome in this case was not driven by a credibility contest between Limon and Vincente as witnesses. Instead, the record

demonstrates that Limon's convictions were driven by a determination that his stabbing of Vincente was unreasonable irrespective of whose version of the events was true.

Limon cites to two cases to argue that the jury's acquittal of him for the greater charge of attempted murder suggests it was skeptical of the prosecution's case and therefore the trial court's error in limiting cross-examination of Vincente was prejudicial. We find the cases unpersuasive because both involved sexual misconduct charges where the defendant's guilt entirely depended upon the credibility of the victim's testimony as the only direct evidence of the alleged crimes. (*People v. Brown* (1993) 17 Cal.App.4th 1389, 1391-1394 [defendant acquitted of putting mouth on victim's genital area, but convicted of committing a lewd and lascivious act, where victim's testimony was the only direct evidence that the acts occurred and defendant denied their occurrences]; *People v. Epps* (1981) 122 Cal.App.3d 691, 694-00 [defendant acquitted of unlawful intercourse and contributing to delinquency of a minor charges, but convicted of annoying or molesting a minor, where victim's testimony was the only direct evidence that the acts occurred and defendant denied their occurrences].) In contrast, the occurrence of the underlying events here — Limon stabbing Vincente — was undisputed, meaning the jury could have based its verdicts upon objective facts without completely accepting either witness's testimony as credible.

Indeed, the nature of the verdicts in this case are consistent with a conclusion that the jury's convictions were not driven by a witness credibility determination. Specifically, the greater charge of attempted murder, which Limon was found not guilty of, is a crime that can be excused by a finding of imperfect self-defense. (*People v. Soto* (2018) 4 Cal.5th 968, 974-975.) In contrast, neither of the charges Limon was convicted of — attempted voluntary manslaughter and assault with a deadly weapon — could have been excused by a finding of imperfect self-defense. (See *People v. Barton* (1995) 12 Cal.4th 186, 200 [“‘unreasonable self-defense’ is . . . not a true defense; rather, it is a shorthand description of one form of voluntary manslaughter”]; see also

People v. Minifie (1996) 13 Cal.4th 1055, 1064-1065 [a claim of self-defense to an assault charge must be based upon an honest and reasonable belief by defendant that bodily injury was imminent].) Accordingly, the verdicts in this case are consistent with a conclusion that the jury determined that Limon's claim of self-defense was honest but simply unreasonable.

We observe ample undisputed facts for the jury to have concluded the stabbing incident was unreasonable. For example, Limon admitted to stabbing the unarmed Vincente and disregarding words Vincente spoke to him during the stabbing incident, while claiming he could not remember any details regarding the sequence of events to explain the extent of the injuries he inflicted. Indeed, the prosecution explicitly stated during closing arguments that neither Limon nor Vincente's stories made sense but that Limon's guilt did not depend upon believing either version of events asserted at trial.

To support his argument that the outcome in this case depended upon witness credibility, Limon cites to *People v. Rowland* (1968) 262 Cal.App.2d 790 and *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39. Limon's citation to *Abatti* merely states the general proposition that the impeachment of a witness can be critical in the outcome of a criminal case. (*Id.* at p. 52.) It is not this general proposition we disagree with but Limon's argument that it requires a finding of prejudicial error in this specific case.

Contrasting the circumstances in *Rowland* to this case is illustrative. In *Rowland*, an assault with a deadly weapon conviction was reversed because the appellate court found the defendant should have been permitted to cross-examine the purported victim about the victim's sexual orientation and history of violent behavior. (*People v. Rowland, supra*, 262 Cal.App.2d at pp. 797-798.) Specifically, the court reversed based upon the fact that, at trial, the defendant had argued the victim made a sexual advance while the two men had been alone in the victim's car and the advance is what precipitated the gunshot injury underlying the case. (*Rowland, supra*, 262 Cal.App.2d at pp. 791-

792.) The victim denied making a sexual advance and testified he was married to a woman and had three children. (*Id.* at p. 792.) In other words, the claim of self-defense in *Rowland* required a finding about the victim's sexual orientation because it bore directly on the defendant's claim of self-defense as well as the victim's credibility as a witness. (*Id.* at pp. 796-798.)

In contrast, in this case, the issue of whether the victim (Vincente) intended to apply for immigration benefits had no direct relationship to defendant's claim of self-defense. As the prosecution argued at trial, even if Limon had acted in self-defense, the objective unreasonableness of his repeatedly stabbing Vincente was the determinative issue in this case. Under the circumstances presented, we find any marginal advantage that could have been gained in further impeaching the already devastated credibility of Vincente, regarding his intention to apply for a U visa as a crime victim, would not have resulted in a more favorable outcome for Limon.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.